LIBRARY
SUPREME COURT, U.S.

Office-Supreme Court, U. S.
FILED
NOV 8 1950
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

No. 344

UNITED STATES OF AMERICA, *Petitioner*

VS.

WARREN V. MOORE AND MRS. WARREN V. MOORE,
Respondents

BRIEF FOR RESPONDENTS

FRANK CUSACK
322 West Jefferson Boulevard
Dallas, Texas
Counsel for Respondents

B. DUNCAN & CO., Brief Printers, 1820 E. Jefferson, Dallas, Texas

INDEX

	Page
Certificate of Service	9
Statement	1
Propositions	2
Argument	3
Conclusion	8

CITATIONS

Authorities:

Creedon v. Randolph, 165 F. 2d 918	5
Ebeling v. Woods, 175 F. 2d 242	5
Jackson v. Woods, 182 F. 2d 338	5
Porter v. Warner Holding Co., 328 U.S. 395	3
Woods v. Richman, 174 F. 2d 614	5
Woods v. Wayne, 177 F. 2d 559	5
Woods v. Wolfe, 182 F. 2d 516	5

Statutes:

Housing and Rent Act of 1947:

Sec. 204 (F)	6
Sec. 204 (J) (3)	7
Sec. 205	2

IN THE

Supreme Court of the United States

No. 344

UNITED STATES OF AMERICA, *Petitioner*

VS.

WARREN V. MOORE AND MRS. WARREN V. MOORE, *Respondents*

BRIEF FOR RESPONDENTS

STATEMENT

The statement of the petitioner correctly and succinctly states the questions endeavored to be presented by the petition for the writ, except in the conclusion that the Court of Appeals, rested its decision on the theory that restitution of over ceiling rentals can not be granted in the absence of power to grant an injunction. The respondents submit that the decision of the Court of Appeals was and is to the effect that decontrol under Section 204(J) (3) of the Housing and Rent Act of 1947, there survived only a legal

action for damages, and that the one year statute of limitations in Section 205 of the Act[1] was applicable.

While not agreeing with the Court of Appeals that any cause of action not then pending survived decontrol in Dallas, the respondents submit that the propositions herein stated, demonstrate the correctness of the conclusion of the Court of Appeals, that at most, there was saved only the legal action which was governed by the one year statute of limitation.

PROPOSITIONS

FIRST PROPOSITION: The judicial authority contained in Section 206(B). Housing and Rent Act of 1947, to enforce the provisions of said Act, by order of restitution or other order, is dependent upon the right to invoke the jurisdiction of the Court under such section, and, such equitable jurisdiction does not survive the termination of controls under the provisions of Section 204(J) (3) of the Act.

SECOND PROPOSITION: If any action is saved to the United States after decontrol under the provisions of Section 204(J) (3) of the Housing and Rent Act of 1947, it is the pure legal remedy under Section 205(A) of the Act, AND SUCH AN ACTION INSTITUTED AFTER

---

1 USCA, Title 50, War & National Defense Appendix, Section 1895.

THE EFFECTIVE DATE OF DECONTROL INVOKES NO EQUITABLE JURISDICTION OF THE COURT.

ARGUMENT

The decision of the Court of Appeals in this case is one of first impression, Dallas being one of the first, if not the first, major City in the United States to terminate Federal Rent controls under Section 204(J) (3) of the Act. This was accomplished on June 23, 1949. (F. R. 3494). This Action was thereafter filed on June 29, 1949 (R. p 1).

The Court of Appeals in its opinion, clearly and definitely held in accordance with the reasoning of this Court in Porter vs. Warner Holding Company, 328 U. S. 395, and not in conflict therewith, as is contended by the petitioner. In the Warner case, this Court was passing upon the Emergency Price Control Act of 1942, the language of which is substantially the same as that of Section 206(B) of the Housing and Rent Act of 1947, but in which case, there existed at the time of the filing of the action, a right in equity and the Court's equitable jurisdiction had attached. Justice Murphy, after reviewing the facts and reaching this conclusion, speaking for this Court, said: "Thus the Administrator invoked the jurisdiction of the District Court to enjoin Acts and practices made illegal by the Act, and to enforce compliance with the Act. Such jurisdiction is an equitable one. Unless otherwise pro-

vided by statute, all the inherent equitable powers of the District Court are available for the proper and complete exercise of that jurisdiction."

There is nothing in the holding of this Court in Porter vs. Warner Holding Company, supra, that warrants the conclusion of the respondents that restitution in itself is a cause of action, but to the contrary, this Court definitely held in that case that the equity jurisdiction of the District Court had first to be invoked under the appropriate equitable section of the Act, in that case Section 205(A) of the Price Control Act of 1942, and in this case, Section 206(B) of the Housing and Rent Control Act of 1947.

The facts in this case clearly distinguishes it from all of the cited cases, and the Court of Appeals correctly held: "But in the present case, there is no right of action surviving for an injunction, and no other equitable action to which restitution could be an adjunct, with the result that under the legal action, that survived decontrol, the statute of limitations of one year is in full force and effect." (R. p. 27) This holding would be imminently correct even if it be conceded that the Court had the right to order restitution as an adjunct of its legal jurisdiction. For restitution not being in itself a right of action, the one year statute of limitations would nevertheless be applicable.

In none of the cases cited by the petitioner, was the action instituted after the right to invoke the equitable power of the Court had been terminated as in this case. In Jack-

son vs. Woods, 182 F. 2nd, 338, while decided after decontrol in Dallas, the Court of Appeals for the Fifth Circuit, correctly held that having been filed on February 11, 1949, prior to decontrol, that the order of restitution in that case was correct. In the cases of Woods vs. Wayne, 177 F. 2nd, 559; Woods vs. Richmond, 174 F. 2nd, 614; Eberling vs. Woods, 175 F. 2nd, 242; and Woods vs. Wolfe, 182, F. 2nd, 516, the facts justified the holding that jurisdiction of the District Court attached under the equitable provisions of either section 205(A) of the Emergency Price Control Act of 1942, and/or Section 206(B) of the Housing and Rent Act of 1947, and there is no conflict in the holding of the Court of Appeals in this case, with any of those holdings, nor is there any conflict in its own previous holding in the case of Creedon vs. Randolph, 165 F. 2nd, 918. In the Creedon case, the Court of Appeals for the Fifth Circuit decided that case while the Emergency Price Control Act of 1942 was in full force and effect, and merely held that the equitable powers of the Court under Section 205(A) of that Act had been properly invoked, because the complaint sought an "or other order" as provided in such section, because: "That to require restitution of overcharges tends to enforce the law prohibiting them, no one will deny."

The petitioner in this case is in no position to complain or seek a review in this Court, where the judgment of the Court below is more favorable to it than it should have been, and under the well established policy of this Court, a

judgment will not be disturbed where the judgment of the Court below is either a proper one or is one more favorable to the petitioner than it should have been.

It is submitted that such is true in this case, the Court of Appeals held that the Trial Court properly denied respondent's motion to dismiss the entire action because of the savings clause of the Emergency Price Control Act of 1942 (50 USCA Section 201), or the general savings clause (1 USCA, Section 109), as construed by that Court in United States vs. Carter, 171 F. 2nd, 530 (R. p. 24). The petitioner contends in its petition that the savings clause in Section 204(F) of the Housing and Rent Act of 1947 (50 USCA Appendix 1894F)[2], is plainly broad enough to cover liabilities which arose prior to decontrol, even where suit is not brought until after the decontrol takes place. This same section is evidently the one that the Court of Appeals intended to cite, rather than the savings clause of the Emergency Price Control Act of 1942, for such Act had expired long prior to the date of the alleged violation and of course could have no application. The respondents take sharp issue with the petitioner that

---

2 The provisions of this title (Sections 1891-1899 of this Appendix) shall cease to be in effect at the close of June 30, 1950, or upon the date of a proclamation by the President or upon the date specified in a concurrent resolution by the two Houses of the Congress, declaring that the further continuance of the authority granted by this title (said sections) is not necessary because of the existence of an emergency, which ever date is the earlier; except that as to rights or liabilities incurred prior to such termination date, the provisions of this title (said sections) and regulations, orders, and requirements thereunder shall be treated as still remaining in force for the purpose of sustaining any proper suit or action with respect to any such right or liability.

the cited section of the Act is broad enough to cover this liability, for that, such section itself had been terminated prior to the filing of the action, such is the plain provisions of Section 204(J) (3) of the Act.[3]

The savings clause relied upon to sustain the action having died with decontrol in Dallas, it can afford no comfort to the petitioner in this case, nor can the general savings clause, (1 USCA Section 209) under the facts in this case, sustain the Court of Appeals in affirming the action of the Trial Court refusing to dismiss the entire complaint.

The peculiar wording of Section 204(J) (3), was the mature and deliberate act of Congress, and the word "terminate" was used in its usual and customary signification: "to end," "to bring to a close," and the general savings clause has no application to such a situation. That general savings clause only protects those rights and liabilities which might be affected by the inadvertent overlooking by the Congress of some such right or liability in repealing or allowing to expire some statutory provision. Cer-

---

3 **The Housing Expediter shall terminate the provisions of this title (Sections 1891-1899 of this Appendix)** in any incorporated city, town or village upon receipt of a resolution of its governing body adopted for that purpose in accordance with applicable local law and based upon a finding by such governing body reached as the result of a public hearing held after ten days' notice, that there no longer exists such a shortage in rental housing accommodations as to require rent control in such city, town or village: **Provided however, That such resolution** is first approved by the Governor of the State before being transmitted to the Housing Expediter: **And provided further,** That where the major portion of a defense-rental area has been decontrolled pursuant to this paragraph (3), the Housing Expediter shall decontrol any unincorporated locality in the remainder of such area.

tainly it would be a strained construction to say that such general savings clause saved to the petitioner this cause of action when the Congress had maturely and deliberately said that decontrol of housing accommodations in the City of Dallas, under Section 204 (J) (3), *should terminate the provisions of such Title (the Act) including the savings clause which the Congress had enacted.* If the Congress had intended that actions should survive decontrol under such section, it would have been a simple matter for the joint-conference committee to have so provided. It must be borne in mind that this legislation was passed long after large portions of the country had contended and claimed that the reasons for control had long since expired and to meet such clamor and demand of the population, the Congress inserted Section 204(J) (3) in the Act, and respondents submit it is not an unreasonable assumption that the Congress had in mind protecting property owners against such suits as this, where the cause of action had accrued within the year preceding the decontrol to relieve them from the possible inequity of having had to endure continued controls until such time as the local authorities had taken the then authorized action.

CONCLUSION

In conclusion, it is respectfully submitted that the question presented by the petition for writ of certiorari is purely academic, and that the Court below has either cor-

rectly decided the issue or has decided it more favorably to petitioner than that to which it is entitled, and the writ of certiorari should be refused.

In the alternative that if the importance of the question is sufficient to demand the Court grant the writ, then the entire question as to what survived decontrol, should be reviewed and decided. If as contended by petitioner, the decision will govern many future cases, the opinion of this Court should be sufficiently broad to dispose of respondents' contention that all right to institute an action is completely and finally at an end with decontrol under Section 204(J) (3) of the Housing and Rent Act of 1947.

Respectfully submitted,

FRANI (C. F.) CUSACK
322 West Jefferson
Dallas, Texas
Counsel for Respendents

I, Frank Cusack, Counsel for Respondents, Warren V. Moore and Mrs. Warren V. Moore, hereby certify that the petitioner has been served with the within brief by mailing five copies thereof to the Honorable Philip B. Perlman, Solicitor General of the United States by United States mail, deposited in the post office at Dallas, Texas, ad-

dressed to the Honorable Philip B. Perlman, Solicitor General, Washington, D. C., with postage thereon pre-paid.

.....

FRANK (C. F.) CUSACK
322 West Jefferson
Dallas, Texas
Counsel for Respendents